In the Supreme Court
OF THE
United States

OCTOBER TERM, 1943

No. 723

CITY OF LOS ANGELES (a municipal corporation), DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES,
Petitioners,

vs.

NATURAL SODA PRODUCTS COMPANY (a corporation).

CITY OF LOS ANGELES (a municipal corporation), DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES,
Petitioners,

vs.

NATURAL SODA PRODUCTS COMPANY (a corporation).

STATEMENT OF RESPONDENT IN OPPOSITION TO MOTION FOR LEAVE TO PROCEED WITH PETITION FOR WRITS OF CERTIORARI ON TYPEWRITTEN TRANSCRIPT OF RECORD AND ORIGINAL EXHIBITS ON FILE.

KENNETH FERGUSON,
FRANCIS R. KIRKHAM,
JESS G. SUTLIFF,
Counsel for Respondent.

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In this case no federal question was raised in the state trial court; no federal question was raised in the Statement of Questions Involved on Appeal filed by petitioners in the courts below;[1] aside from one or two passing references, clearly insufficient to found the jurisdiction of this Court,[2] no federal question was even mentioned in the briefs filed in the state appellate courts. No federal question is raised in the record; no such question was presented to or decided by the Supreme Court of California,[3] by the District Court of Appeal,[4] or by the trial court.

We believe it clear that this Court is without jurisdiction in this case for want of a properly presented federal question.

Further, even if a federal question had been timely raised, the decision sought to be reviewed would rest upon adequate nonfederal grounds of decision. So much is clear from the petition itself. And still further, no substantial

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[1]Rule VIII, Rules of the Supreme Court and District Courts of Appeal of the State of California, effective at the time of petitioners' appeal below, so far as pertinent, provided:

> "Sec. 2. A statement of the question involved on an appeal in a civil action shall be set forth on the first page of the appellant's opening brief, and without any other matter appearing thereon."

[2]For example, even the tardy statement in the petition for a rehearing filed by petitioners in the Supreme Court of California and referred to at page 3 of the petition for writs of certiorari, is as follows:

> "To require defendants so to do for the benefit of plaintiff, would be a confiscation of defendants' property in violation of the constitutional guaranties against the taking of property without compensation or without due process of law."

[3]The opinion of the California Supreme Court is reported at 23 A.C. 190, 143 P.(2d) 12.

[4]The opinion of the District Court of Appeal is reported at 56 A.C.A. 108, 132 P.(2d) 553.

federal question—indeed, no federal question at all—is urged in the petition for writs of certiorari.

Notwithstanding the foregoing, petitioners have filed a petition for certiorari which requires respondent to oppose the motion to proceed upon the unprinted record. The petition seeks a general review of all questions involved in the case. In this situation, it clearly is essential that the entire record, as it was considered by the court below, be before this Court. No valid reason for dispensing with the printing of the typewritten transcript is presented by the motion. Additionally, no reason appears why petitioners failed to print the motion now under consideration, as required by Rule 7, paragraph 1, of the Rules of this Court.

The one hundred fifty-two exhibits referred to in paragraph (2) on page 2 of petitioners' motion are original exhibits which were certified to the Supreme Court of California from the trial court and which, we understand, have been certified to this Court. Respondent does not oppose the motion in so far as it seeks to dispense with the printing of these exhibits.

We should point out that petitioners' motion states (paragraph (11), page 6) that the Clerk of this Court already has been advised to proceed immediately with the printing of the record. We are uncertain, therefore, exactly what relief petitioners seek. The procedure in this

case is further confused by the fact that petitioners have served upon respondent a notice of the filing of the petition for writs of certiorari and a printed copy of the petition, but no printed copy of the record. (Compare Rule 38, paragraph 3, of the Rules of this Court.) If (or in so far as) petitioners' motion is treated as one for an extension of time within which to serve a printed copy of the record upon respondent (i.e., until after the Clerk of this Court shall have had an opportunity to print the record), respondent does not oppose the motion.

Dated, San Francisco, California,
March 3, 1944.

Respectfully submitted,

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JESS G. SUTLIFF,
Counsel for Respondent.